

1 THE HONORABLE JAMES L. ROBART
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 JOHN DOE, et al.,

10 Plaintiffs,

CASE NO. C17-0178JLR

(RELATING TO BOTH CASES)

11 v.

12 DONALD TRUMP, et al.,

13 Defendants.

14 JEWISH FAMILY SERVICE of
15 SEATTLE, et al.,

16 Plaintiffs,

17 v.

18 DONALD TRUMP, et al.,

19 Defendants.

CASE NO. C17-1707JLR

20 **[PROPOSED] STIPULATED ORDER PURSUANT TO FEDERAL RULE OF
21 EVIDENCE 502(d)**

22 The Court hereby orders pursuant to Rule 502(d) of the Federal Rules of Evidence that the
23 procedure set forth in this Stipulation shall be used in the event of an inadvertent production of a
24 document during this litigation. Inadvertent production of a document, or part of a document,
25 shall not constitute a waiver of any privilege or protection as to any portion of that document, or
26 as to any undisclosed privileged or protected communications or information concerning the same

1 subject matter, in this or in any other proceeding. This Order applies to attorney-client privilege
2 and work-product protections, as well as all other protections afforded by Federal Rule of Civil
3 Procedure 26(b) and governmental privileges. Nothing in this Order shall constitute an admission
4 that any document disclosed in this litigation is subject to any of the foregoing privileges or
5 protections, or that any party is entitled to raise or assert such privileges. Additionally, nothing
6 in this Order shall prohibit parties from withholding from production any document covered by
7 any applicable privilege or other protection. Nothing in this Order shall limit a party's right to
8 conduct a pre-production review of documents as it deems appropriate.

9 **I. DEFINITIONS**

10 1. "Document," as used herein, includes all items listed in Fed. R. Civ. P.
11 34(a)(1)(A) and (B).

12 2. "Documents Produced," as used herein, includes all documents made available
13 for review or produced in any manner during this litigation.

14 **II. PROCEDURES**

15 The procedures applicable to a claim of privilege on a produced document and the
16 resolution thereof shall be as follows:

17 1. If a party discovers a document, or part thereof, produced by another party that it
18 knows to be privileged or otherwise protected, the receiving party shall promptly
19 notify the producing party and must then return the document or destroy it and
20 certify that it has been destroyed to the producing party. Nothing in this Order is
21 intended to shift the burden to identify privileged and protected documents from
22 the producing party to the receiving party.

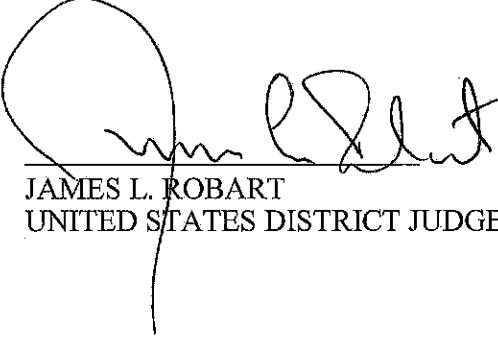
23 2. If the producing party determines that a document produced, or part thereof, is
24 subject to a privilege or privileges, the producing party shall promptly give the
25 receiving party notice of the claim of privilege ("privilege notice").

- 1 3. The privilege notice must contain information sufficient to identify the document
- 2 including, if applicable, a Bates number as well as identification of the privilege
- 3 asserted and its basis.
- 4 4. Upon receiving the privilege notice, if the receiving party agrees with the
- 5 privilege assertion made, the receiving party must promptly return the specified
- 6 document(s) and any copies or destroy the document(s) and copies and certify to
- 7 the producing party that the document(s) and copies have been destroyed. The
- 8 receiving party must sequester and destroy any notes taken about the document.
- 9 If a receiving party disclosed the document or information specified in the notice
- 10 before receiving the notice, it must take reasonable steps to retrieve it, and so
- 11 notify the producing party of the disclosure and its efforts to retrieve the
- 12 document or information.
- 13 5. Upon receiving the privilege notice, if the receiving party wishes to dispute a
- 14 producing party's privilege notice, the receiving party shall promptly meet and
- 15 confer with the producing party. The document(s) shall be sequestered and not
- 16 be used by the receiving party in the litigation (e.g., filed as an exhibit to a
- 17 pleading or used in deposition) while the dispute is pending. If the parties are
- 18 unable to reach an agreement about the privilege assertions made in the privilege
- 19 notice, the receiving party may make a sealed motion for a judicial determination
- 20 of the privilege claim.
- 21 6. Pending resolution of the judicial determination, the parties shall both preserve
- 22 and refrain from using the challenged information for any purpose and shall not
- 23 disclose it to any person other than those required by law to be served with a
- 24 copy of the sealed motion. The receiving party's motion challenging the
- 25 assertion must not publicly disclose the information claimed to be privileged.
- 26 Any further briefing by any party shall also not publicly disclose the information

1 claimed to be privileged if the privilege claim remains unresolved or is resolved
2 in the producing party's favor.

3 **IT IS SO ORDERED**

4 DATED this 4th day of ^{September} August, 2018.

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6 JAMES L. ROBART
7 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that on August 31, 2018, a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

DATED this 31st of August, 2018.

/s/ Joseph C. Dugan
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